IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3244 OF 2007

IN

APPEAL NO.623 OF 2005

IN

NOTICE OF MOTION NO.2071 OF 2003

IN

CHAMBER SUMMONS NO.11 OF 2003

IN

SUMMARY SUIT NO.7 OF 2001

...

Radha Ballabh Chiranjail Kejriwal ...Appellant

v/s.

Bharat Petroleum Corporation Ltd. and ors. ...Respondent

...

Mr.Jay Chinoy with Ms.Sonal and Ms.S.Shaikh i/b S.K.Srivastava & Co. for the Appellant.

Ms.S.John i/b M.P.Savla & Co. for Respondent No.1.

Mr.Ramesh Jain for Respondents Nos. 2 to 6.

Mr.Lalit Jain for Respondent No.8/Applicant.

...

CORAM: D.K.DESHMUKH &
J.H.BHATIA, JJ.
DATED: 4TH OCTOBER, 2007

P.C.:

On a motion made by the learned Counsel for the Applicant, motion is allowed to be withdrawn.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)

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CORAM: D.K.DESHMUKH &
J.H.BHATIA, JJ.
DATED: 4TH OCTOBER, 2007

P.C.:

1. The Appeal is not board for final hearing. By consent of parties, it is heard finally.

2. By this Appeal, the Appellant challenges the order dated 8-6-2005 passed by the learned single Judge of this Court in Notice of Motion No.2071 of 2003. Bharat Petroleum Corporation filed a summary Suit in this court for a money decree against the Firm M/s.Radha Dying & Printing Mills. Three persons namely Mr.Gopal Kejriwal, Mr.Gautam Kejriwal and Mr.Hanumanprasad Kejriwal were joined as Defendants as partners of the Defendant No.1-firm. Admittedly, in that summary suit, money decree came to be passed in favour of the Plaintiff Bharat Petroleum and against the Defendants. The decree holder, thereafter, took out Chamber Summons No.11 of 2003 for executing decree against other persons who, according to the decree holder, were partners of the

firm, but were not joined as Defendants to the suit. The present Appellant is one of the partners of the judgment-debtor firm. That Chamber summons was granted by the court, because other side did not appear and file reply.

3. For setting aside that order, Notice of Motion No.2071 of 2003 has been taken out. The learned single Judge by order dated 8-6-2005 declined to vacate the order passed by the court permitting execution of the decree against the Appellant and attaching a flat admittedly belonging to the Appellant in execution of the decree.

4. We need not go for the purpose of deciding this Appeal into the grounds given by the learned single Judge for rejecting the Notice of Motion. It appears that during the pendency of the proceedings between the decree holder and the judgment-debtor, a settlement was arrived at and as a consequence of that settlement admittedly full amount has been paid and it has been accepted by the decree holder in full and final satisfaction of the decree. In the affidavit dated 6th August, 2007 filed in Notice of Motion No.2436 of 2007, the decree holder states

thus:-

"A settlement was arrived at whereby the well wishers of the Respondents made payments towards full and final satisfaction of the claim of the Respondent No.1 against the Insolvents."

It may be pointed out here that some persons who were partners of the judgment-debor/firm were declared as insolvents. Thus, before us it is an admitted position that the decree, in execution of which the property of the Appellant is attached, has been satisfied and has been fully paid and nothing is outstanding to the decree holder under that decree.

5. The only submission made on behalf of the Decree holder is that the attachment should not be lifted, because original Defendants Nos. 2, 3 & 4 namely Mr.Gopal Kejriwal, Mr.Gautam Kejriwal and Mr.Hanumanprasad Kejriwal were declared as insolvents and they have not yet been discharged.

6. In our opinion, the submission is not well founded. The flat of the Appellant was attached because of the decree passed against the firm, where

the Appellant was a partner and that decree was outstanding. Now that decretal amount has been paid, and therefore, in our opinion, there is no justification whatsoever for continuing the flat of the Appellant under attachment. Attachment of the property has serious consequence and therefore the minimum that is required is that either there should be a strong possibility of decree being passed against the owner or there should be outstanding decree against the owner of the property, when attachment of any property belonging to a person is ordered. When the decretal amount has admittedly been paid off, in our opinion, there is no justification for continuing the flat of the Appellant under attachment.

7. In the result, therefore, the appeal succeeds and is allowed. The order impugned, in so far as it attaches the flat of the Appellant, is set aside.

8. Appeal, Notice of Motion No.2436 of 2007 and Chamber Summons No.917 of 2006 are, therefore, disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.624 OF 2005

IN

CHAMBER SUMMONS NO.9 OF 2004

IN

EXECUTION APPLICATION NO.98 OF 2003

IN

SUMMARY SUIT NO.7 OF 2001

...

Radha Ballabh Chiranjail Kejriwal ...Appellant

v/s.

Bharat Petroleum Corporation Ltd. and ors. ...Respondent

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CORAM: D.K.DESHMUKH &
J.H.BHATIA, JJ.
DATED: 4TH OCTOBER, 2007

P.C.:

In view of the order passed in Appeal No.623 of 2005, no order is necessary in this Appeal.

Appeal, Notice of Motion No.2254 of 2005, Notice of Motion No.2435 of 2006 & Chamber Summons No.918 of 2006 are, therefore, disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)